

Erin P. Moriarty (SBN 146751)  
**LAW OFFICES OF WENETA M.A. KOSMALA**  
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**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

In re	)	Case No.: 8:17-bk-10289-TA
	)	
<b>TIMOTHY BROR TOUVE,</b>	)	<b>NOTICE OF MOTION FOR ORDER</b>
	)	<b>AUTHORIZING TRUSTEE TO (1)</b>
	)	<b>RETAIN BKASSETS.COM AS</b>
	)	<b>AUCTIONEER; (2) HOLD AUCTION</b>
	)	<b>SALE OF CERTAIN ASSETS OF THE</b>
Debtor(s).	)	<b>ESTATE; AND (3) MAKE/AUTHORIZE</b>
	)	<b>CERTAIN DISBURSEMENTS AND SIGN</b>
	)	<b>DOCUMENTS IN CONNECTION WITH</b>
	)	<b>AUCTION</b>
	)	
	)	<b>Date:</b> September 1, 2020
	)	<b>Time:</b> 11:00 a.m.
	)	<b>Ctrm:</b> 5B

**PLEASE TAKE NOTICE** that on September 1, 2020 at 11:00 a.m. in Courtroom 5B of the above-captioned Court, located at 411 W. Fourth Street, Santa Ana, California, a hearing will be held on a “Motion for Order Authorizing Trustee to (1) Retain BKAssets.com as Auctioneer; (2) Hold Auction Sale of Certain Assets of the Estate; and (3) Make/Authorize Certain Disbursements and Sign Documents in Connection With Auction; Memorandum of Points and Authorities; Declarations of Weneta M.A. Kosmala, and David Birdsell in Support Thereof” (“Motion”) filed on behalf of Weneta M.A. Kosmala (“Trustee”), Chapter 7 Trustee of the bankruptcy estate of Timothy Bror Touve (“Debtor”).

**RELIEF SOUGHT IN SALE MOTION:**

Trustee seeks an Order granting the following relief in the Sale Motion:

1. Authorizing Trustee to retain BKAssets.com (“Auctioneer”) to conduct online auctions of certain real and personal property described as follows (collectively, “Assets”):
  - a. Real property in Kern County, California described as follows:
    - i. APN 461-140-23-00-9 (approx. 10 acres).
    - ii. APN 224-222-54-00-7 (approx. 2.5 acres).
    - iii. APN 224-212-45-00-8 (approx. 2.5 acres).
    - iv. APN 181-250-28-00-5 (approx.. 2.07 acres).
    - v. APN 224-364-01-00-8 (approx. 7.5 acres).
  - b. A Wind Energy Site Lease and Renewable Energy Development

1 Agreement (“Lease”) entered into by and between the Debtor (through his revocable trust) as  
2 lessor and Alta Windpower Development, LLC, a Delaware limited liability company) as lessee,  
3 which is a lease covering APN 224-364-01-00-8 for use of the parcel in connection with the  
4 lessee’s wind energy generation project; the Lease is to be sold/assigned along with the parcel.

5 2. Authorizing the Auctioneer to conduct online auctions of the Assets, as generally  
6 described in the Internet Auction Agreement attached as Exhibit “A” to the Motion.

7 3. Authorizing Trustee to establish reserves and minimums for each of the Assets; to  
8 bundle or separate the Assets for multiple auctions on multiple days; to establish the timing and  
9 order of the auctions; and to accept or reject the highest bid; all according to her business  
10 judgment.

11 4. Deeming the successful bidders as to each of the Assets to be a “good faith  
12 purchaser” within the meaning of 11 U.S.C. § 363(m).

13 5. Authorizing Trustee to disburse, or authorize direct disbursement, of  
14 compensation to the Auctioneer of no more than 10% of the gross sales price of the Assets,  
15 expense reimbursement to the Auctioneer of no more than \$500, and up to \$1,500 total in  
16 miscellaneous unanticipated expenses that may be necessary in Trustee’s discretion to  
17 consummate the sales of the Assets.

18 6. Authorizing Trustee to sign and all documents, and to take any and all ministerial  
19 actions, which she may deem necessary and appropriate to consummate the sales of the Assets.

20 The Motion is made under 11 U.S.C. § 363(b). The Assets are property of the Estate  
21 which Trustee may sell for the benefit of the Estate. The Assets will be sold “as is, where is”  
22 subject to all liens and encumbrances (including delinquent property taxes, which must be paid  
23 separately by the buyers); there are no warranties or guarantees implied or stated as to extent,  
24 nature, value, quality, quantity, or otherwise. The Auctioneer operates a successful online  
25 auction platform through ebay.com. In Trustee’s business judgment, the proposed online  
26 auctions are the most efficient and effective way to liquidate the Assets, which consist of small  
27 parcels purchased by the Debtor as investments because of their proximity to a major wind  
28 energy generation development. Because of the wind disruption caused by the development, the  
vacant parcels are generally believed to be unbuildable; their value comes from the potential to  
lease them to wind energy companies (as is evidenced by the Lease, which relates to one of the  
lots). This makes the Assets well suited for auction online. In addition, the current restrictions  
resulting from the coronavirus pandemic make the online auction platform the only practical  
option at the moment for liquidating these Assets. Trustee has been advised that the Assets may  
generate between \$10,000 and \$30,000 at auction, which, after payment of a 10% auction  
commission to the Auctioneer, and reimbursement of no more than \$500 in expenses, should  
result in a net of between \$8,500 and \$26,500 for the Estate.

The Motion is based upon this Notice the Motion and the incorporated Memorandum of  
Points and Authorities, the Declarations of Weneta M.A. Kosmala and David A. Birdsell and  
exhibits thereto, and upon such other evidence as the Court may appropriately consider in  
connection with this Motion.

**Responding to the Sale Motion:** PLEASE TAKE FURTHER NOTICE that Local Bankruptcy Rule 9013-1(f) requires that each party interested in opposing, joining or responding to this Motion file a formal response not later than fourteen (14) days before the hearing. Under Local Bankruptcy Rule 9013-1(h), papers not timely filed and served may be deemed by the Court to be consent to the granting of the relief requested in this Motion.

Date: July 21, 2020

**LAW OFFICES OF WENETA M.A.  
KOSMALA**

/s/ Erin P. Moriarty  
Erin P. Moriarty  
Attorney for Chapter 7 Trustee

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

3 MacArthur Place, Suite 760  
Santa Ana, CA 92707

A true and correct copy of the foregoing document entitled (*specify*): Notice of Motion for Order Authorizing  
Trustee to (1) Retain BKASSETS.COM as Auctioneer; (2) Hold Auction Sale of Certain Assets of the Estate; and  
(3) Make/Authorize Certain Disbursements and Sign Documents in Connection With Auction

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 07/21/2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) 07/21/2020, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Theodor C. Albert  
United States Bankruptcy Court  
411 W. Fourth Street, Suite 5085  
Santa Ana, CA 92701-4593

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

07/21/2020      Janine Fountain  
*Date*                      *Printed Name*

/s/ Janine Fountain  
*Signature*

**ADDITIONAL SERVICE INFORMATION (if needed):**

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”):**

- Stephen N Doan    steve@doanlegalcenter.com, steve@doanre.com
- Weneta M Kosmala (TR)    ecf.alert+Kosmala@titlexi.com,  
wkosmala@txitrustee.com;dmf@txitrustee.com;kgeorge@kosmalalaw.com
- Angie M Marth    bknotifications@ghidottiberger.com
- Erin P Moriarty    emoriarty@kosmalalaw.com,  
wkosmala@kosmalalaw.com;jfountain@kosmalalaw.com;weneta.kosmala@7trustee.net
- Edward A Treder    cdcaecf@bdfgroup.com
- United States Trustee (SA)    ustpreion16.sa.ecf@usdoj.gov

**2. SERVED BY UNITED STATES MAIL:**

David Birdsell  
Bkassets.com LLC  
216 N. Centr  
Mesa, AZ 85201

See attached list:

Label Matrix for local noticing

0973-8

Case 8:17-bk-10289-TA

Central District of California

Santa Ana

Tue Jul 21 17:51:59 PDT 2020

Bank of America Mortgage

P.O. Box 5170

Simi Valley, California 93062-5170

Bank of America Mortgage

790 East Colorado Blvd 9th Floor

Pasadena, CA 91101-2193

Bank of America Mortgage 188991663

P.O. Box 5170

Simi Valley, California 93062-5170

Santa Ana Division

411 West Fourth Street, Suite 2030,

Santa Ana, CA 92701-4500

(p)JPMORGAN CHASE BANK N A

BANKRUPTCY MAIL INTAKE TEAM

700 KANSAS LANE FLOOR 01

MONROE LA 71203-4774

Chase Credit Card 4121383104847609

3415 Vision Drive, Mail Code 0144-7133

Columbus, Ohio 43219-6009

City of Rancho Santa Margarita Code Enforcem

221 12 El Paseo

Rancho Santa Margarita, California 92688

City of Rancho Santa Margarita Code Enforcem

221 12 El Paseo

Rancho Santa Margarita, California 92688-2824

Dave McClure

57825 Boo Lane

Landers, California 92285

Internal Revenue Service

PO Box 7317

Philadelphia, PA 19101-7317

Jason Ortiz

1317 Chert

San Marcos, California 92078-2822

Michael Joseph Leyn and Sharon Annette Leyn

252 Rainbow Drive

Livingston, Texas 77399-2052

Michael Joseph Leyn and Sharon Arnette Leyn

252 Rainbow Drive

Livingston, Texas 77399-2052

Quality Construction

ATTN Anthony Myers

27758 Santa Margarita #102

Mission Viejo, California 92691-6709

Quantus Realty Solutions

32158 Camino Capistrano, 110

San Juan Capistrano, CA 92675-3711

Roberta Nelson

ATT Stephen Doan, Realtor - Attorney

32158 Camino Capistrano

San Juan Capistrano, California 92675-3720

SamIarc HOA

22342 Avenida Empresa

Rancho Santa Margarita, California 92688-2140

Selene Finance LP, Account 6732

9990 Richmond Avenue

Suite 400 South

Houston, Texas 77042-4546

Stephen Doan, Realtor - Attomey

32158 Camino Capistrano

San Juan Capistrano, California 92675-3720

Stephen Doan, Realtor - Attorney

32158 Camino Capistrano

San Juan Capistrano, California 92675-3720

Stephen Welch, Attorney

1254 Irvine Boulevard

Tustin, California 92780-3509

Sumise Assessment Services

81 Blue Ravine Road Suite 100

Folsom, California 95630-4766

Sunrise Assessment Services

81 Blue Ravine Road Suite 100

Folsom, California 95630-4766

Timothy Bror Touve

2 1 Calle Coturno

Rancho Santa Margarita, California 92688

949-910-7808 timzv3@hotmail.com 92688-2306

United States Trustee (SA)

411 W Fourth St., Suite 7160

Santa Ana, CA 92701-4500

Wilmington Savings Fund Society, FSB

c/o SELENE FINANCE LP

9990 RICHMOND AVENUE,

STE. 400 SOUTH

HOUSTON, TX 77042-4546

Timothy Bror Touve

21 Calle Coturno

Rancho Santa Margari, CA 92688-2306

Weneta M Kosmala (TR)

3 MacArthur Place, Suite 760

Santa Ana, CA 92707-6071

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified  
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Chase Credit Card  
3415 Vision Drive, Mail Code 0144-7133  
Columbus, Ohio 43219

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Courtesy NEF (u)Law Offices of Weneta M.A. Kosmala (u)Wilmington Savings Fund Society, FSB, Doin

(du)Wilmington Savings Fund Society, FSB, doi

End of Label Matrix  
Mailable recipients 28  
Bypassed recipients 4  
Total 32